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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION,

Case No. 13-MD-02420 YGR (DMR)
MDL No. 2420

This Documents Relates to:
ALL INDIRECT PURCHASER ACTIONS

INDIRECT PURCHASER PLAINTIFFS'
OPPOSITION TO PANASONIC AND
SANYO DEFENDANTS'
ADMINISTRATIVE MOTION TO
EXPEDITE CONSIDERATION OF
MOTION TO STRIKE SECOND
RENEWED MOTION FOR CLASS
CERTIFICATION

DATE ACTION FILED: Oct. 3, 2012

Indirect Purchaser Plaintiffs (“IPPs”) respectfully request that this Court (a) deny Panasonic’s Administrative Motion to Expedite Consideration of Their Motion to Strike IPPs’ Corrected Second Renewed Motion for Class Certification (“Administrative Motion”) (ECF No. 2397), and (b) strike Panasonic’s Motion to Strike IPPs’ Corrected Second Renewed Motion for Class Certification, (“Motion to Strike”) (ECF No. 2396).¹ In its Administrative Motion, Panasonic seeks to cut the normal briefing time for IPPs in half, giving IPPs only one week (until August 27) to respond to Panasonic’s 18-page Motion to Strike, which includes lengthy legal and factual citations.² IPPs would be prejudiced by not having at least the normal two weeks afforded by the Rules to oppose Panasonic’s motion. *See* Civil L.R. 7-3. That prejudice is particularly stark because, if granted, Panasonic’s motion would be dispositive of IPPs’ motion for class certification.³

Panasonic suggests a shortened briefing schedule is necessary because *if* the Court grants the Motion to Strike almost immediately, Panasonic would have to invest fewer resources in its opposition to IPPs’ motion for class certification, currently due on September 7, 2018.⁴ But *it was Panasonic* that proposed the September 7 due date for its opposition to class certification, as part of a full stipulated briefing schedule for IPPs’ motion for class certification, which this Court ordered.⁵ Panasonic should not be permitted to propose a briefing schedule and then use that schedule as reason to shorten IPPs’ time to respond to a related motion. Panasonic claims it is concerned about the opposition due date – which is in the stipulated schedule that Panasonic

¹ “Panasonic” refers collectively to Defendants Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., and SANYO North America Corporation.

² *See, e.g.*, Motion to Strike at 7-18; Declaration of Cristina M. Fernandez in support of Motion to Strike (ECF No. 2396-2).

³ The prejudice to IPPs is compounded by the fact that Panasonic filed its Administrative Motion on the same day that it filed the Motion to Strike, August 20. IPPs had four days to file an opposition to the Administrative Motion. *See* Civil L.R. 7-11(b). Thus, IPPs had until Friday, August 24 to file an opposition to Panasonic’s request that this Court order IPPs to file their opposition to the Motion to Strike on Monday, August 27.

⁴ Panasonic also requests in its Administrative Motion that the Court deny oral argument on the Motion to Strike (before even reading the papers), which IPPs oppose, and decide the motion in Panasonic’s favor “as soon as possible after August 27, 2018 and prior to September 7, 2018.”

⁵ *See* stipulation with proposed schedule, filed by Panasonic (ECF No. 2378), and the Court granting the stipulation (ECF No. 2398).

1 proposed just over a week ago. But it never contacted IPPs about these concerns or proposed to
 2 IPPs that the stipulated briefing schedule should be changed. And meeting and conferring in an
 3 attempt to obtain a stipulation before filing an administrative motion is required by Civil Local
 4 Rule 7-11. Panasonic never met and conferred with IPPs or stated why it could not in its
 5 Administrative Motion, which is an independent reason to deny the Administrative Motion.

6 The foregoing facts also show why the Court should strike Panasonic's Motion to Strike.
 7 Panasonic proposed and then stipulated to a briefing schedule for IPPs' motion for class
 8 certification that makes it virtually impossible for its Motion to Strike to be decided before the
 9 briefing on class certification is complete. Thus, full briefing on the Motion to Strike is an
 10 enormous waste of resources because the Motion to Strike covers ground duplicative of what will
 11 be included Panasonic's opposition to the motion for class certification. If Panasonic wants to
 12 make procedural objections to IPPs' class certification motion – which is essentially what the
 13 Motion to Strike is – Panasonic should have to do so in its class certification opposition. Indeed,
 14 numerous similar issues are also covered in Panasonic's pending motion for summary judgment, as
 15 well as the dueling *Daubert* motions, which are by design proceeding on a briefing schedule that is
 16 the same as the one for the class certification motion. *See* ECF No. 2378 (joint Panasonic/IPP
 17 stipulation stating that all of these motions should proceed on same schedule for “efficiency
 18 reasons”). If Panasonic wanted “expedited” consideration of these issues, it should not have asked
 19 for an extension of the briefing schedule. Panasonic's Motion to Strike is inconsistent with the
 20 schedule stipulated to by Panasonic itself, it would undermine the “efficiency reasons” for that
 21 schedule, and it can be substantively covered in the existing (stipulated to) briefs. Thus, IPPs
 22 respectfully request that this Court strike Panasonic's Motion to Strike.

23 If, in the alternative, this Court believes a response to Panasonic's Motion to Strike would
 24 be of assistance to the Court, IPPs respectfully request that the schedule already in place for the
 25 pending motion for summary judgment, *Daubert* motions, and renewed motion for class
 26 certification be applied – namely, an opposition brief be filed on September 7, 2018, and a reply
 27 brief by the Panasonic-Sanyo defendants on October 5, 2018 (ECF Nos. 1873, 2378).

1 DATED: August 24, 2018

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(I)(3)

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

By: /s/ Shana E. Scarlett